United Nations CCPR/C/115/D/2258/2013

International Covenant on Civil and Political Rights

Distr.: General
8 January 2016

Original: English

Human Rights Committee

Communication No. 2258/2013

Views adopted by the Committee at its 115th session (19 October-6 November 2015)

Submitted by:	Jenirthan Rasappu and Jenarthan Rasappu (represented by counsel, Michala Bendixen from Refugees Welcome)
Alleged victim:	The authors
State party:	Denmark
Date of communication:	3 June 2013 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 14 June 2013 (not issued in document form)
Date of adoption of Views:	4 November 2015
Subject matter:	Deportation to Sri Lanka of unaccompanied minors
Procedural issues:	Failure to sufficiently substantiate allegations
Substantive issues:	Risk of torture or cruel, inhuman or degrading treatment
Articles of the Covenant:	7
Articles of the Optional Protocol:	2

GE.16-00193(E)

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Annex

Views of the Human Rights Committee under article 5 (4) the Optional Protocol to the International Covenant on Civil and Political Rights (115th session)

concerning

Communication No. 2258/2013*

Submitted by:	Jenirthan Rasappu and Jenarthan Rasappu (represented by counsel, Michala Bendixen from Refugees Welcome)
Alleged victim:	The authors
State party:	Denmark
Date of communication:	3 June 2013 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 4 November 2015,

Having concluded its consideration of communication No. 2258/2013, submitted to it on behalf of Jenirthan Rasappu and Jenarthan Rasappu under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication, and the State party,

Adopts the following:

Views under article 5 (4) of the Optional Protocol

1.1 The authors of the communication are Jenirthan Rasappu and Jenarthan Rasappu, Sri Lankan nationals, born on 28 November 1992. They claim that their return to Sri Lanka by the State party would constitute a violation of article 7 of the Covenant. They are represented by counsel.

1.2 On 14 June 2013, pursuant to rule 92 of the Committee's rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to deport the authors to Sri Lanka while the communication was being examined. On 17 June 2013, the Ministry of Justice of Denmark

* The following members of the Committee participated in the consideration of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Ahmed Amin Fathalla, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodriguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval. A joint opinion by Committee members Yuval Shany, Anja Seibert-Fohr and Konstantine Vardzelashvili (dissenting) is appended to the present Views.

extended the time limit for the authors' departure until further notice, in accordance to the Committee's request.

Factual background

2.1 The authors are twin brothers, ethnic Tamils and of Christian faith. They claim that their father was a member of the Liberation Tigers of Tamil Eelam (LTTE) until he got married, that he was a "border guard" and that he called himself "Karthik". They were born in Jaffna. When they were 3 years old, their family fled to Puthukkudiyiruppu, in the Vanni area, due to the civil war. They grew up and went to primary and lower secondary school there until 2007, when they had to stop attending the school because of the war. Their father worked as a welder, but in 2009 he was abducted by persons who displayed the LTTE logo. Their father's fate and whereabouts since that time remain unknown. Afterwards, the military forces moved closer to their village and they, together with their mother and sister, fled to Mullivaikal. However, on an unspecified day, the military forces attacked Mullivaikal with artillery and also from the air, which forced them to flee again. While they were fleeing, they lost contact with their mother and sister. The authors claimed that they were unable to make contact with their mother and sister again.

2.2 The authors claim that they were taken by the military to the Ramanathan camp, in the city of Vavuniya. The camp was run by the military, and nobody could enter or leave it without military authorization. They were accused of having fought for LTTE. Jenarthan was interrogated three or four times, and Jenirthan once, about their connections with LTTE and their father's whereabouts. They further claim that, when Jenarthan denied any connection with LTTE, members of the army hit and threatened him. The authors also claim that they were afraid to tell military staff about the kidnapping of their father by LTTE. After two months, their mother's brother found them. He went to the camp twice. The second time, he managed to take the authors out of the camp by paying bribes, and brought them to Colombo. He also arranged for them to leave Sri Lanka.

2.3 After traveling through Thailand and another country, on 11 October 2009 the authors arrived in Denmark without valid travel documents. They claim that they were 16 years old at that time. On 12 October 2009, the police interviewed them. On 20 and 22 October 2009, respectively, Jenarthan and Jenirthan filed applications for asylum before the Danish Immigration Service. They claimed that they feared being persecuted and accused of being LTTE members as a result of their Tamil ethnicity, their father's past membership in that organization, his disappearance and the events they had experienced in their country. They also claimed that this risk was aggravated by the fact that they had left Sri Lanka illegally. They further claimed that, prior to their departure from Sri Lanka, they had never met their grandparents or most of their relatives, since their parents' families disapproved of their marriage; that they had lost contact with their mother's brother; and that they presumed their mother and sister had died during the war.

2.4 On 25 May 2010, the Danish Immigration Service decided that the authors were sufficiently mature to have their applications for asylum examined. On 28 May 2010, the Immigration Service rejected the applications. It stated that there was no information based on which to presume that the disappearance of the authors' father was linked to the activities of LTTE, that the authors had declared that they were not members of LTTE, that they were not personally in contact with members of LTTE and that they had had no problems with the authorities in relation with their father's previous membership with LTTE. According to reports on the human rights situation in Sri Lanka, persons who did not support or were not high -profile members of LTTE were in general not persecuted by the authorities. It further noted that the war in Sri Lanka had ended and LTTE had been defeated; and that the fact that they had parents and that their village had been exposed to disturbances or bombings could not lead to the conclusion that they were in need of international protection. The authors appealed the decision to the Refugee Appeals Board.

2.5 On 2 July 2010, the Ministry of Justice refused the applications of the authors for residence permits on humanitarian grounds under section 9b (1) of the Aliens Act.

2.6 On 22 September 2010, the Refugee Appeals Board rejected the authors' appeal. The Board stated that it had found the following accounts given by the authors as fact: they were ethnic Tamils from the Vanni area; they had not been politically active; their father had been taken by LTTE sometime in 2009; they had fled to Mullivaikal; they had lost contact with their mother and sister; and they had been driven by the military to a camp in Vavuniya, where they had been picked up by a maternal uncle after two months. However, the fact that their father had been an active member of LTTE could not lead to the conclusion that the authors were at risk of persecution. It noted that their father's membership in that organization had ended when he got married and after that he had been able to live for a long period without any problem. The Board further noted that there was no basis for assuming that the father's activities up to the date of the authors' departure had been of such nature or scope that they had subsequently drawn attention to him; and that the authorities of Sri Lanka had not inflicted any abuses on the authors when they were in the camp in Vavuniya, which they had left without difficulty. Further, according to background information on the human rights situation in Sri Lanka, persons suspected of being LTTE supporters but who were not high profile were generally not at risk of persecution. Therefore, the Board concluded that the authors' removal to Sri Lanka would not put them at risk of persecution. The Board pointed out that no deadline to leave the State party had been established, since the Danish Immigration Service had indicated during the hearing that it would consider ex officio whether the authors' case fell under section 9c (3) (ii) of the Aliens Act (special residence permit for an unaccompanied minor seeking asylum). However, the authors could be forcibly removed to Sri Lanka if they were not granted residence permits under that provision.

2.7 Within the proceedings before the Danish Immigration Service under section 9c (3) (ii) of the Aliens Act, the authors claimed that they had no contact with anybody in Sri Lanka. They also provided psychological reports dated 8 November 2010 stating that they had learning difficulties, low self-esteem, anxiety and depression, and that they were in special need of support, guidance and care. They further provided Jenarthan's medical records dated 8 September 2011 from the Danish Red Cross, which noted that he suffered from post-traumatic stress disorder and had suicidal thoughts.

2.8 On 5 July 2011, the Danish Immigration Service asked the Ministry of Foreign Affairs to initiate a search for the authors' relatives in Sri Lanka. On 7 July 2011, the Ministry informed the Immigration Service that it had been unable to carry out the search owing to both security and resource reasons.

2.9 On 30 January 2012, the Immigration Service refused to grant the authors residence permits under section 9c (3) (ii) of the Aliens Act. It considered that they had failed to show that their low cognitive level and psychological condition were of such severity as to require them to remain in the State party, and that their problems could also be treated in Sri Lanka. Although the search for the authors' parents through the Red Cross had been unsuccessful and the Ministry of Foreign Affairs had been unable to conduct a search in Sri Lanka, there was no evidence to conclude that their parents were no longer alive and living in Sri Lanka. The authors appealed the decision to the Ministry of Justice.

2.10 On 27 February 2013, the Ministry of Justice confirmed the 30 January 2012 decision of the Immigration Service and informed the authors that they should leave the territory of the State party on 6 March 2013 at the latest. The Ministry pointed out that an unaccompanied minor who claimed that he had no family network in his country of origin normally bore the burden of proving that claim; that the authors had been born and raised in Sri Lanka with their parents and siblings; that it must be assumed that their parents and sister were still living in Sri Lanka; and that they might constitute a family network for them such that they would not be placed in an emergency situation upon return. It further stated that, even if their parents and sister had died, the authors would not meet the

conditions required to be issued a residence permit, since they had an uncle who lived in Colombo. The fact that they did not know his exact address in Colombo could not lead to any other result. Accordingly, the Ministry of Justice found that the situation of the authors would not be different from the situation applicable to other persons of the same age in Sri Lanka, and that they would not in fact be placed in an emergency situation upon return to that country. Finally, it concluded that the information provided regarding the authors' general learning difficulties, low self-esteem, anxiety and depression, as well as their special need for support and care, could not lead to a different conclusion.

The complaint

3.1 The authors alleged that their deportation to Sri Lanka would constitute a violation of article 7 of the Covenant, in view of their Tamil origin, the events they had gone through prior to their departure, their father's previous membership in LTTE and his disappearance.

3.2 The authors claimed that the Danish authorities had not adequately assessed the risk to which they would be subject if returned to Sri Lanka. They were at serious risk of being detained and tortured by the Sri Lankan authorities, since they were young Tamils from Jaffna and their father had been a member of LTTE. Tamils who were returned to Sri Lanka were often detained upon arrival and exposed to acts of torture.[1] In their case, the fact that they had left the country illegally and would be returned by the State party with temporary travel documents put them at further risk.

3.3 They claimed that they had been abroad since 2009 and that they had no family or connections left in Sri Lanka. They were very young, had limited cognitive skills and needed special support, as described in a report issued by a psychologist of the Danish Red Cross.

State party's observations on admissibility and merits

4.1 On 16 December 2013, the State party provided observations on the admissibility and merits of the communication. It maintained that the communication should be declared inadmissible for non-substantiation. Should the Committee declare the communication admissible, the Covenant would not be violated if the authors were returned to Sri Lanka.

4.2 The State party informed the Committee that on 29 August 2013 the Refugee Appeals Board had refused the request by the authors to reopen the asylum proceedings. The Board stated, inter alia, that when it considered cases in which the asylum seeker was an unaccompanied minor, it would assess the asylum seeker's procedural capacity, including maturity. In that connection, the Board referred to its decision of 22 September 2010, in which it had assessed that the authors were sufficiently mature to undergo asylum proceedings, since they had been able to give coherent statements on their grounds for seeking asylum, as well as during the proceedings before the Danish Immigration Service. Further, it had also found as fact the statements of the authors regarding their grounds for seeking asylum. Against that background, the Board had found no basis for reopening the proceedings.

4.3 The State party provided a detailed description of the asylum proceedings under the Aliens Act, in particular the organization and competence of the Refugee Appeals Board. Decisions of the Board were based on an individual and specific assessment of the relevant case. The statements of an asylum seeker regarding his or her grounds for seeking asylum were assessed in the light of all relevant evidence, including what was known from background material about conditions in the country of origin. The Board was responsible not only for examining and bringing out information on the specific facts of the case, but

[1] The authors refer to the Human Rights Watch report *"We Will Teach You a Lesson": Sexual Violence against Tamils by Sri Lankan Security Forces* (February 2013).

also for providing the necessary background material, including information on the situation in the asylum seeker's country of origin or first country of asylum.[2]

4.4 The State party provided a detailed description of the provisions of the Aliens Act that regulated asylum proceedings in cases involving unaccompanied minors. It maintained that unaccompanied asylum-seeking minors must meet the same conditions as other asylum seekers in order to be granted asylum. However, children were considered a particularly vulnerable group, and special guidelines therefore applied to the examination of their applications. All unaccompanied asylum-seeking minors would have an appropriate adult appointed by the State Administration to represent them and safeguard their interests until they turned 18. The examination of the child by the Refugee Appeals Board was adapted to the child's age and maturity. Normally, the Board was less demanding when it came to the burden of proof. The State party referred to paragraphs 213 to 219 of the Office of the United Nations High Commissioner for Refugees (UNHCR) Handbook on Procedures and Criteria for Determining Refugee Status and held that, when a minor had not reached a sufficient degree of maturity to make it possible to establish a well-founded fear of persecution in the same way for him or her as for an adult, it might be necessary to give greater regard to certain objective factors.

4.5 In the proceedings concerning the request for residence permits for unaccompanied minors under section 9c (3) (i) or (ii) of the Aliens Act, children under the age of 12 were normally not considered sufficiently mature to undergo ordinary asylum proceedings. As for children between the ages of 12 and 15, a child was assessed individually to determine whether he or she was sufficiently mature to undergo asylum proceedings. Children over the age of 15 were normally considered sufficiently mature, but a specific determination was made in each individual case. In the assessment of the minor's maturity, factors taken into consideration included not only the minor's age, but also other special factors, such as impaired development, illness or severe trauma. The Danish Immigration Service made the decision regarding the child's maturity, and the assessment was subject to review by the Refugee Appeals Board in connection with the consideration of a refusal of asylum, if relevant.

4.6 Pursuant to section 9c (3) (ii) of the Aliens Act, a residence permit could be issued to an unaccompanied alien who had submitted an application for a residence permit pursuant to section 7 (asylum) prior to his eighteenth birthday if there was reason to assume, in cases other than those mentioned in section 7 (1) and (2) of the Aliens Act, that the alien would in fact be placed in an emergency situation upon return to his or her country of origin. Under section 9c (3) (ii) of the Aliens Act, the assessment by the authorities took into account both the personal circumstances of the asylum seeker and the general situation in his or her country of origin. For instance, a residence permit was normally granted in cases in which the child's parents were dead or there was reliable information that the parents could not be found; or in which there would be a serious risk that the child would in fact be placed in an emergency situation upon return. Pursuant to section 40 (1), first sentence, of the Aliens Act, an asylum seeker must provide such information as was required for deciding whether a residence permit could be issued under the Act. Accordingly, it followed that an unaccompanied minor who claimed that he had no family network in his country of origin normally bore the burden of proving such a claim.

4.7 As to the authors' case, the State party maintained that the Refugee Appeals Board had based its decision of 22 September 2010 on the principles contained in the judgement of the European Court of Human Rights in *NA. v. the United Kingdom* (application No. 25904/07, judgement of 17 July 2008) – inter alia, that regardless of the deterioration of the security situation in Sri Lanka and the resulting increase in the number of human rights

[2] As to the background material regarding Sri Lanka, the State party referred to the website of the Refugee Appeals Board (www.fln.dk).

violations, that did not create a general risk for all Tamils returning to Sri Lanka.[3] The State party pointed out that, in its decision of 22 September 2010, the Refugee Appeals Board had made a specific individual assessment and concluded, inter alia, that the activities carried out by the authors' father for LTTE had occurred so long ago and were of such scope and nature that they had not drawn attention to him (or, consequently, the authors), and that the authors had not previously been subjected to any abuse by the authorities. The Board had further stated, inter alia, that the authors had not been subjected to any abuse by the authorities during their stay in the camp in Vavuniya, that they had left the camp without any problem and that it appeared from the background information on the situation in Sri Lanka that persons suspected of being sympathetic to LTTE, but who were not high profile, were generally not at any risk of persecution. The State party submitted that there was no reason to question the Board's assessment and that the authors' individual situations did not in any way indicate that they would be subjected to torture or cruel, inhuman or degrading treatment or punishment upon return to Sri Lanka.

4.8 The State party maintained that the authors were in fact trying to use the Committee as an appellate body to have the factual circumstances presented in support of their claim for asylum reassessed by the Committee. However, the Committee should give considerable weight to the findings of the Refugee Appeals Board, which was better placed to assess the findings of fact in the authors' cases. In that connection, in February 2013 its authorities had determined that there was no specific basis in the background information on Sri Lanka for assuming that Tamils who had not themselves been affiliated with LTTE and whose family members were not high-profile members of LTTE would be at any risk of persecution or abuse justifying asylum merely as a consequence of their ethnicity. The State party referred to the 2012 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka,[4] and noted that the authors' father did not appear to have had an executive position with LTTE, according to the authors' own statements. Moreover, their father's involvement with LTTE had occurred long ago, and he had been able to leave the organization without experiencing any problem and to live in peace with his family for many years. Other available background material concerning Sri Lanka to which the authors had referred, including reports from Freedom House and Human Rights Watch,[5] also did not appear to contain information that would support the assumption that Tamils who were not high profile, like the authors, would be subjected to persecution or abuse upon their re-entry to Sri Lanka as failed asylum seekers.

4.9 The State party pointed out that on 27 February 2013 the Ministry of Justice had decided not to grant the authors residence permits under section 9c (3) (ii) of the Aliens Act. It stated, inter alia, that there was an insufficient basis for assuming that the author's family was not still living in Sri Lanka. Even if their parents and sister had died, the authors had a maternal uncle residing in Colombo, and he might constitute a family network such that the authors would not be placed in an emergency situation upon return.

4.10 As to the authors' allegations that they were vulnerable and needed support due to their age, level of maturity and health, the State party noted the Immigration Service and Refugee Appeals Board conclusions that the authors were sufficiently mature to undergo asylum proceedings. Their situation as unaccompanied asylum-seeking minors had been duly taken into account by the authorities. After their asylum requests had been denied by

[3] The State party also refers to European Court of Human Rights jurisprudence in *N.S. v. Denmark* (application No. 58359/08), *P.K. v. Denmark* (application No. 54705/08), *S.S. and Others v. Denmark* (application No. 54703/08), *T.N. and S.N. v. Denmark* (application No. 36517/08) and *T.N. v. Denmark* (application No. 20594/08).

[4] See UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka (21 December 2012), sect. III.A.1.

[5] Freedom House, *Freedom in the World 2013*, analysis of Sri Lanka (10 June 2013); and Human Rights Watch, "*We Will Teach You a Lesson*".

the Refugees Appeals Board, the Danish Immigration Service and the Ministry of justice had assessed ex officio whether the authors could be granted a residence permit under section 9c (3) (ii). The assessment of an asylum seeker's procedural capacity is made on the basis of a personal appearance and the ability to give relevant answers to the questions asked during a Board hearing. During the hearing of a case, the Board would take into special consideration the asylum seeker's individual situation, including his or her age and health. The State party referred to the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status[6] and pointed out that the Board would, from the outset, be less demanding when it came to the burden of proof in cases involving asylum seekers who were minors or who had a mental disorder or impairment.

Authors' comments on the State party's observations

5.1 On 16 February 2014, the authors submitted their comments on the State party's observations on admissibility and merits. They argued that background material about the human rights situation in Sri Lanka published after 22 September 2010 should have been taken into account by the Refugee Appeals Board when considering their request for reopening the asylum proceedings, and by the Ministry of Justice in reaching its decision of 27 February 2013. According to that background material, Tamils were exposed to massive abuse and arbitrary detention in Sri Lanka, providing sufficient ground for reopening their asylum proceedings.[7] In the view of the authors, all Tamils were at risk in Sri Lanka.

5.2 The authors submitted that the 2012 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka indicated that Tamils with family ties to former LTTE supporters were exposed to treatment which might give rise to a need for international protection.

5.3 The authors submitted that the burden of proof should be lower when it came to minor asylum seekers, and health problems or other vulnerabilities should also be considered. In their case, psychological examinations carried out by the Danish Red Cross had indicated that the authors had limited cognitive skills, suffered from anxiety and needed special support.[8] However, the authorities had failed to give any special consideration to that information. The Ministry of Justice had assumed that their mother and sister were still alive, in spite of the fact that 40,000 persons had been killed at the time and place they were last seen and that the authors had heard nothing about them since. As to their uncle, they did not know if he still lived in Colombo, and had had no contact with him or any other relative in the previous five years. Moreover, the authors claimed that their uncle had told them that he did not want to take care of them because he was hiding his Tamil origin.

5.4 The authors submitted that the State party's observations concerning their accounts were not accurate. They highlighted that, in their interviews with the Danish authorities as part of the asylum proceedings, they had mentioned that they had left the Ramanathan camp secretly and because their uncle had paid a bribe to some of the staff. The military staff had accused the authors of having fought for LTTE, interrogated them about their father and hit one of them.

5.5 The authors reiterated that the authorities had failed to give due consideration to relevant information, such as the fact that they were Tamils, had been taken to a military camp from which they had escaped by paying a bribe, had left the country illegally, had a father who had been a member of LTTE and had come from an area that had been

[6] Specifically to paras. 206-219 of the Handbook.

[7] The authors refer to the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka; and Human Rights Watch, *"We Will Teach You a Lesson"*.

[8] The authors did not provide any documentation. It appears that they were referring to the report provided by the Red Cross as part of the proceedings to determine if they met the conditions for being granted residence permits under section 9c (3) (ii) of the Aliens Act.

controlled by LTTE for many years. In addition, the authorities had not taken into account their young age, limited cognitive skills and mental health.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee notes, as required under article 5 2 (a) of the Optional Protocol, that the same matter is not being examined under any other procedure of international investigation or settlement.

6.3 The Committee notes that the authors unsuccessfully appealed the refusal of their asylum claim to the Danish Refugee Appeals Board, as well as the denial of residence permits under section 9c (3) (ii) of the Aliens Act to the Ministry of Justice; and that the State party does not challenge the claim that the authors have exhausted all domestic remedies. The Committee therefore considers that domestic remedies have been exhausted according to article 5 2 (b) of the Optional Protocol.

6.4 The Committee notes the authors' claims under article 7 of the Covenant that, if returned to Sri Lanka, they would be at risk of being tortured or killed. The Committee also takes note of the State party's argument that the authors' claims under article 7 are unsubstantiated. However, the Committee considers that, for the purpose of admissibility, the authors have provided sufficient substantiation regarding their claims. As no other obstacles to admissibility exist, the Committee declares the communication admissible and proceeds to its consideration on the merits.

Consideration of the merits

7.1 The Committee has considered this communication in the light of all the information received, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee recalls its general comment No. 31, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant.[9] The Committee has indicated that such a risk must be personal[10] and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.[11] Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.[12]

7.3 The Committee recalls its jurisprudence that significant weight should be given to the assessment conducted by the State party, and that it is generally for the organs of States parties to the Covenant to review or evaluate the facts and evidence of the case in order to

[9] See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

[10] See communications No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2; and No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6; as well as the following decisions of the Committee against Torture: No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006; No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010; and No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010.

[11] See *X v. Denmark*, para. 9.2; and communication No. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

[12] Ibid.

determine whether such a risk exists, unless it can be established that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice.[13]

7.4 The Committee notes the authors' claims under article 7 that, if returned to Sri Lanka, they would face a risk of persecution as young Tamils from Jaffna whose father was a former LTTE member, and as failed asylum seekers who would have been returned with temporary travel documents; that the authorities of the State party did not give sufficient weight to the events they had experienced prior to their departure from their country of origin; and that background material alleges that all Tamils are at serious risk in Sri Lanka. The Committee also notes the authors' claims that the authorities failed to take into sufficient consideration their lack of family ties in Sri Lanka, their limited cognitive skills and their need for special support.

7.5 The Committee further notes the State party's arguments that Tamils would not be at risk solely because of their ethnicity; that, according to background material on the human rights situation in Sri Lanka available at the time that the Refugee Appeals Board denied the authors' request for asylum, persons suspected of being sympathetic to LTTE, but not high profile, were generally not at any risk of persecution; and that further reports published before February 2013 did not support the conclusion that Tamils who had not themselves been affiliated with LTTE and whose family members were not high-profile members of LTTE would be at any risk of persecution. Against that background, the State party maintained that the authors would not be at risk of treatment contrary to article 7 of the Covenant if returned to Sri Lanka. Further, its immigration authorities, including the Refugees Appeals Board and the Ministry of Justice, had also taken into account the situation of the authors as unaccompanied minors and concluded that they were sufficiently mature to undergo asylum proceedings; that their low cognitive level and psychological conditions were not of such severity as to require them to stay in the State party; and that, if returned, they would not be placed in an emergency situation.

7.6 The Committee observes that the Danish Immigration Service examined ex officio whether special residence permits should be given to the authors as unaccompanied minors under section 9c (3) (ii) of the Aliens Act; that the Ministry of Justice confirmed the Immigration Service decision of 27 February 2013, when the authors were 20 years old, not to grant them special residence permits; that the authors have not provided information regarding the nature and severity of their alleged psychological difficulties; and that the authors have not shown that they have necessary family or medical support in the State party that they could not receive in their country of origin.

7.7 On the other hand, the Committee also observes that the Refugee Appeals Board found as fact the following accounts given by the authors: they are ethnic Tamils from the Vanni area; their father was taken away by LTTE in 2009; the family fled to Mullivaikal; they lost contact with their mother and sister; and they were taken by the military to a camp in Vavuniya, where they were picked up by a maternal uncle after two months. Although the authorities did not refute the claim that the father of the authors had been an active member of LTTE, they denied the authors' request for asylum mainly because their father was not a high-profile member of LTTE and his affiliation with it had ended years earlier. The Refugee Appeals Board referred to these findings when rejecting the authors' request for reopening the asylum proceedings on 29 August 2013. However, the Committee observes that current reports in the public domain concerning the human rights situation in Sri Lanka,[14] as well as those to which the parties refer,[15] indicate that, despite the change in

[13] See, inter alia, communications No. 2393/2014, *K v. Denmark*, Views adopted on 16 July 2015, para. 7.4; and No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3.

[14] See, for instance, United States of America Department of State, country reports on human rights practices for Sri Lanka (Washington, D.C., 25 June 2015); Immigration and Refugee Board of Canada, "Sri Lanka: treatment of suspected members or supporters of the Liberation Tigers of Tamil

conditions in the country, human rights violations, including torture, continue to occur and that, inter alia, certain individuals of Tamil ethnicity who are suspected of having links to LTTE, such as persons with family links or who are dependent on or otherwise closely related to former LTTE combatants, "cadres" or former LTTE supporters who may never have undergone military training, may be in need of international protection. In the light of the information provided by the authors, the information presently available to the Committee and the record of human rights violations in Sri Lanka, the Committee considers that the authorities of the State party have not given appropriate consideration to the claim of the authors that they would be at risk of being subjected to torture or ill-treatment if removed to Sri Lanka as a result of the previous affiliation of their father with LTTE, the fact that they were taken away by this organization in 2009 and the events that the authors went through prior to their departure from Sri Lanka. Under these circumstances, the Committee is of the view that the removal of the authors in the absence of further consideration of their claim would put them to a real risk of irreparable harm such as that contemplated in article 7 of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the deportation of the authors to Sri Lanka would violate their rights under article 7 of the Covenant.

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to proceed to a review of their requests for asylum, taking into account the State party's obligations under the Covenant and the present Views. The State party is also under an obligation to avoid exposing others to similar risks of violation.

10. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to its Views. The State party is also requested to publish the Committee's Views and to have them translated into the official language of the State party and widely distributed.

Eelam (LTTE), including information about how many are in detention; whether the government continues to screen Tamils in an attempt to identify LTTE suspects – 2011-January 2015" (Ottawa, 11 February 2015); Freedom from Torture, "Tainted peace: torture in Sri Lanka since May 2009" (London, August 2015); and International Crisis Group, "Sri Lanka between elections", Asia report No. 272 (Brussels, 12 August 2015).

[15] See footnotes 4 and 5 above.

Appendix

Joint opinion of Committee members Yuval Shany, Anja Seibert-Fohr and Konstantine Vardzelashvili (dissenting)

1. We regret that we are unable to join the majority on the Committee in finding that, in deciding to deport the author, Denmark would violate its obligations under article 7 of the Covenant.

2. In paragraph 7.3 of the Views, the Committee recalls that "it is generally for the organs of States parties to the Covenant to examine the facts and evidence of the case in order to determine whether such a risk exists, unless it can be established that the assessment was arbitrary or amounted to a manifest error or denial of justice". Yet, in paragraph 7.7, it holds that "the authorities of the State party have not given appropriate consideration to the claim of the authors that they would be at risk of being subjected to torture or ill-treatment if removed to Sri Lanka due to the previous affiliation of their father with LTTE, the fact that they were taken away by this organi[illegible] in 2009 and the events that the authors went through prior to their departure fr[illegible]".

3. In past cases in which the decision of State o[illegible] dividual was found by the Committee to run contrary to the Covenan[illegible] pted to base its position on inadequacies in the domestic decision-[illegible] nestic organs of the State party that had led to the decision to the [illegible]s that the final decision was manifestly unreasonable or arbitrary in n[illegible] nable evidence was not properly taken into account or inadequate co[illegible] given in domestic proceedings to the specific rights of the author under the [illegible]venant.[a] Procedural inadequacies consisted, at times, of serious procedural flaws in the conduct of the domestic review proceeding[b] or of the inability of the State party to provide a reasonable justification for its decision.[c]

4. Still, in the present case, the Committee merely notes that "current reports in the public domain concerning the human rights situation in Sri Lanka, as well as those to which the parties refer, indicate that, despite the change in conditions in the country, human rights violations, including torture, continue to occur and that, inter alia, certain individuals of Tamil ethnicity who are suspected of having links to LTTE, such as persons with family links or who are dependent on or otherwise closely related to former LTTE combatants, 'cadres' or former LTTE supporters who may never have undergone military training, may be in need of international protection". Note that the said "current reports" in the public domain, which were published only after asylum proceedings in the State party had been concluded (and therefore could not have been considered by the State party's authorities), do not suggest a worsening of the human rights situation in Sri Lanka, nor do they establish a new personal risk to the authors which was not included in the information that was before the State party's authorities when reviewing the authors' request for asylum.

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[a] See e.g. communication No. 1544/2007, *Hamida v. Canada*, Views adopted on 18 March 2010, paras. 8.4-8.6.

[b] See e.g. communication No. 1908/2009, *X. v. Republic of Korea*, Views adopted on 25 March 2014, para. 11.5.

[c] See e.g. communication No. 1222/2003, *Byahuranga v. Denmark*, Views adopted on 1 November 2004, paras. 11.3 and 11.4.

5. The majority of the Committee did not point to any procedural flaw, failure to consider an important piece of information or lack of motivation of the decision to deport. More specifically, we do not find a basis in the case file, including in the current reports found in the public domain cited in paragraph 7.7 of the Views, to regard the conclusion of the authorities of the State party that individuals such as the authors, who were not high-profile LTTE activists and were not related to such high-profile activists, as arbitrary or amounting to a manifest error or denial of justice. In fact, we are of the view that, had there been new relevant information in the current reports, the proper course of action for the Committee would have been to suspend its proceedings and request the parties' comments on the said reports before drawing any factual conclusions therefrom.

6. We therefore respectfully dissent from the position taken by the majority of the Committee in the present case.